

## Nuclear Regulatory Commission

## § 2.749

proceeding, any order to the Executive Director for Operations to produce the document or records (or any other order issued ordering production of the document or records) may contain such protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating pursuant to § 2.715(c), and to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, is received and possessed by a party other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of this chapter. The presiding officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed pursuant to § 2.205. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed an order issued under section 161b of the Atomic Energy Act.

(f) A ruling by the presiding officer or the Commission for the production of a record or document will specify the time, place, and manner of production.

(g) No request pursuant to this section shall be made or entertained before the matters in controversy have been identified by the Commission or the presiding officer, or after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer for good cause shown.

(h) The provisions of § 2.740 (c) and (e) shall apply to production of NRC records and documents pursuant to this section.

[37 FR 15135, July 28, 1972, as amended at 40 FR 2973, Jan. 17, 1975; 46 FR 51723, Oct. 22, 1981]

### SUMMARY DISPOSITION ON PLEADINGS

#### **§ 2.749 Authority of presiding officer to dispose of certain issues on the pleadings.**

(a) Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. The moving party shall annex to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Motions may be filed at any time. Any other party may serve an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. The party shall annex to any answer opposing the motion a separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. The opposing party may, within ten (10) days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto may be entertained. The presiding officer may dismiss summarily or hold in abeyance motions filed shortly before the hearing commences or during the hearing if the other parties or the presiding officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion and thereby extend the proceeding.

(b) Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify

to the matters stated therein. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, shall be rendered.

(c) Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the presiding officer may refuse the application for summary decision or may order a continuance to permit affidavits to be obtained or make such other order as is appropriate and a determination to that effect shall be made a matter of record.

(d) The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. However, in any proceeding involving a construction permit for a production or utilization facility, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the permit shall be issued.

[37 FR 15135, July 28, 1972, as amended at 46 FR 30331, June 8, 1981; 54 FR 33181, Aug. 11, 1989]

#### HEARINGS

##### § 2.750 Official reporter; transcript.

(a) A hearing will be reported under the supervision of the presiding officer, stenographically or by other means, by an official reporter who may be designated by the Commission or may be a regular employee of the Commission.

The transcript prepared by the reporter is the sole official transcript of the proceeding. Except as limited pursuant to Sec. 181 of the Act or order of the Commission, the transcript will be available for inspection at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room. Copies of transcripts are available to parties and to the public from the official reporter on payment of the specified charges.

(b) *Transcript corrections.* Corrections of the official transcript may be made only in the manner provided by this paragraph. Corrections ordered or approved by the presiding officer shall be included in the record as an appendix, and when so incorporated the Secretary shall make the necessary physical corrections in the official transcript so that it will incorporate the changes ordered. In making corrections there shall be no substitution of pages but, to the extent practicable, corrections shall be made by running a line through the matter to be changed without obliteration and writing the matter as changed immediately above. Where the correction consists of an insertion, it shall be added by rider or interlineation as near as possible to the text which is intended to precede and follow it.

(c) *Free transcript.* Except in an anti-trust proceeding, in any adjudicatory proceeding on an application for a license or an amendment thereto, the presiding officer may arrange for provision of one free transcript to a party, other than the applicant, upon request by that party. The transcript will be made available to a party at the same time and location as it is made available to the NRC staff. If a transcript is mailed to the staff, it will also be mailed to the requesting party. A presiding officer has the discretion to control the distribution of transcripts to parties.<sup>1</sup>

[27 FR 377, Jan. 13, 1962, as amended at 45 FR 49537, July 25, 1980; 45 FR 54725, Aug. 18, 1980; 46 FR 13681, Feb. 2, 1981; 64 FR 48948, Sept. 9, 1999]

<sup>1</sup>This paragraph is suspended until further action of the Commission. (See 46 FR 13681, Feb. 24, 1981)